

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE CLERK

In the Matter of

Access Charge Reform

)
)
)
)

CC Docket No. 96-262

COMMENTS OF

ALIAN T COMMUNICATIONS CO.

Submitted by:

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins
1455 Pennsylvania Ave., N.W.
Washington, D.C. 20004-1008
(202) 639-6755

Counsel for
Aliant Communications Co.

January 29, 1997

No. of Copies rec'd
100-400000

0212

TABLE OF CONTENTS

Section.....	Page
EXECUTIVE SUMMARY	
I. INTRODUCTION	1
II. RATE STRUCTURE	1
A. Common Line	2
B. Transport Interconnection Charge	2
III. MARKET BASED APPROACH	3
A. Baseline	5
B. Phase 1	5
C. Phase 2	9
D. Forbearance	10
E. Reserve Deficiency	10
IV. UNBUNDLED NETWORK ELEMENTS	11
V. CONCLUSION	12

Comments of Aliant Communications Co.
January 29, 1997

EXECUTIVE SUMMARY

Aliant Communications Co. submits its comments on a number of issues raised by the Commission's Notice of Proposed Rulemaking in this proceeding. Aliant submits that all non-traffic sensitive costs on the loop side of the switch should be recovered on a per-line basis. Further, the residence SLC cap needs to be set equal to the multi-line business cap of \$6.00. LECs need the flexibility to recover loop cost in the most economically efficient manner.

The Transport Interconnection Charge represents valid costs. Costs that cannot be identified and shifted to new or existing rate elements should be spread across the Transport and Tandem Switching zones.

The Commission should adopt a market-based approach to access regulation because the prescriptive approach is inappropriate. Under Phase 1, LEC access services should be in a single basket and grouped into four categories: common line, local switching, transport and tandem switching, and database and other. Each group would be broken down into zones as defined in an interconnection agreement. Under Phase 2, service would be removed by wire center from price cap regulation upon a showing of actual competition. Finally, as competition evolves, the Commission should forbear from regulating access services.

Any identified reserve deficiency should be removed from price cap regulation and recovered from all users of the public network over a fixed period of time.

The Commission should ensure that unbundled elements are only used to carry traffic to and from end users served by unbundled elements.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	

COMMENTS OF ALIANT COMMUNICATIONS

Aliant Communications Co.¹ ("Aliant"), by its attorneys, hereby submits its comments in response to the above-referenced Notice of Proposed Rulemaking.²

I. **INTRODUCTION**

This rulemaking seeks comment on a series of proposed reforms to the existing access charge rate structures rules that are designed to eliminate certain inefficiencies. Specifically, the Commission is seeking comment on various access rate structure modifications and the adoption of a market-based or prescriptive approach to access charge regulation.

II. **RATE STRUCTURE**

The Commission proposes several rate structure changes. Aliant's comments address modifications to two areas: Common Line and the Transport Interconnection Charge ("TIC").

¹ Aliant Communications Co. was formerly known as The Lincoln Telephone and Telegraph Company.

² Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking, (released December 24, 1996) ("NPRM").

A. Common Line

Aliant asserts that all non-traffic sensitive costs on the loop side of a switch are caused by the provision of dialtone service and should be recovered on a per-line basis. Further, since there are no constraints on CLECs regarding which prices reflect the costs of providing service, ILECs need the flexibility to recover loop costs either through access charges or from end users, according to market pressures. Therefore, the residential subscriber line charge ("SLC") cap must be equalized with the multi-line business SLC cap at \$6.00. The TELRIC pricing standards, set forth in the Section 251 Order,³ make no distinction between loop costs based solely on whether they are used for residence or business services. Retention of such an arbitrary distinction is economically inefficient and results in implicit subsidies. This situation is contrary to the 1996 Telecom Act⁴ and must be corrected.

B. Transport Interconnection Charge

The Transport Interconnection Charge ("TIC") represents the recovery of valid network costs that have been assigned to the interstate jurisdiction under the Commission's Part 36 rules. Elimination of the TIC through a phase-down is arbitrary and inappropriate. Specific costs in the TIC that can be identified should be shifted to the appropriate existing or new rate elements. Any remaining amounts result from the Commission's use of special access rates to set direct trunked and

³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, (released August 8, 1996) ("Section 251 Order").

⁴ The Telecommunications Act of 1996 ("1996 Telecom Act").

tandem switched transport rates in the LTR Order.⁵ In that Order, the Commission required price cap LECs to use prior period special access rates as a surrogate for switched transport rates. As a result, any switched transport costs not covered by special access rates were then placed in the TIC. A significant portion of the TIC results from the fact that special access is primarily an urban service while switched transport is primarily a rural service. Approximately, 77% of Aliant's DS-1 special access revenue is located in Lincoln, Nebraska,⁶ while 79% of Aliant's tandem switched transport and 58% of Aliant's DS-1 direct trunked transport revenue is located outside of Lincoln⁷. Therefore, LECs should have the flexibility to shift any remaining TIC amounts into Transport and Tandem Switched zones through category/zone specific exogenous adjustments. This will allow the market, not the regulator, to decide if these costs can be recovered.

III. MARKET BASED APPROACH

The fundamental question the Commission asks in this proceeding is whether to adopt a market-based or prescriptive approach for setting future access charge levels. Regulatory theory dictates that regulation should be applied only in the absence of competition. The application of a prescriptive approach at this time would violate that doctrine and would increase regulation at exactly the same time that ILEC markets are opened to competition in an unprecedented change for

⁵ In the Matter of Transport Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking (released October 16, 1992); First Memorandum Opinion and Order on Reconsideration (released July 21, 1993); and Second Memorandum Opinion and Order on Reconsideration, (released August 18, 1993) ("LTR Order").

⁶ Lincoln, Nebraska is the only metropolitan area Aliant serves.

⁷ Source - Aliant's 1996 Annual Filing Tariff Review Plan.

this industry. The prescriptive approach is not only untimely but also contrary to the purpose of the 1996 Telecom Act. The 1996 Telecom Act intended for regulations to be reduced not increased. The prescriptive approach reimposes onerous and stringent cost-based regulation on price cap LECs. Finally, a prescriptive approach presumes that the regulator, not the market, knows the proper price level and denies the market the opportunity to set prices.

Under the prescriptive approach, the Commission proposes "requiring LECs to move their prices to specified levels"⁸. Rather than impose yet another rigid price structure through the development of new, Part 69-like, pricing rules, the Commission should realize that it has, in fact, already set this in motion with the Section 251 Order. An effective interconnection agreement will force a LEC to balance its access prices with its unbundled element rates. Absent this balance, LECs will lose not only access revenues but local and toll revenues as well. Once a CLEC has entered an ILEC market, there is nothing preventing it from selling exchange access services to IXCs; in fact, customers will probably demand this.

In the past, the Commission has refused to give LECs flexibility in setting access prices, citing LEC retention of the "local bottleneck". Once a ILEC has an effective interconnection agreement, any local bottleneck is gone. Entry and exit into the local market can happen with relatively little cost and risk. Any arguments that ILECs with an effective interconnection agreement continue to retain a "local bottleneck" are simply incorrect.

A. Baseline

Prior to the completion of an interconnection agreement, access charge regulation status quo could be maintained. Aliant continues to support the access and price cap reform recommendations it has placed in the record in the CC Docket No. 94-1 Proceeding⁹, but, in light of the Section 251 Order and limited resources only focuses on the reforms necessitated by the 1996 Telecom Act and the Section 251 Order.

B. Phase 1

The trigger for Phase 1, potential competition, should be an effective interconnection agreement. An effective interconnection agreement demonstrates that a LEC has opened all of its markets to competition and eliminated any "local bottleneck". Further, unbundled elements duplicate the services offered under access and provide IXCs alternative sources of end user access.

In Phase 1, the Commission suggests relieving ILECs of regulatory restraints on geographic de-averaging, term and volume discounts, contracts, and new services. Aliant agrees these modifications are appropriate and long needed, but believes they do not give ILECs all the flexibility that will be needed once an interconnection agreement becomes effective. Additionally, Aliant believes all access services should be placed in a single price cap basket. Within this basket, services should be separated into four groups: (i) Common Line, (ii) Local Switching, (iii) Transport and

⁹

Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Second Further Notice of Proposed Rulemaking, (released September 20, 1995); Fourth Notice of Proposed Rulemaking, (released September 27, 1995) ("CC Docket No. 94-1 Proceeding")

Tandem Switching, and (iv) Database and Other¹⁰. Each group would be broken down into the relevant number of zones as specified within an interconnection agreement, without a parent service category. There should be no sub-categories as there are in the existing price cap plan. For example, if loop costs were split into four zones in an interconnection agreement, then there would be four price zones for common line and no over-arching common line service category.

Each service category/zone should be allowed upward flexibility of 10% and no restriction on downward flexibility. ILECs must have the ability to align access prices with unbundled element rates without the vestiges of Part 69 allocations. Further, the price cap formula has inadvertently shifted costs from the Common Line basket to the Local Switching and Trunking baskets. The X-Factor, as previously developed by the Commission, reflects the average productivity of LECs on all interstate access services. This X-Factor is uniformly applied to all access price cap baskets. However, it is widely accepted that per-line services are less productive than per-minute services¹¹. As a result, the Common Line basket, with primarily per-line services¹², has a much lower inherent productivity than the Local Switching basket, with primarily per-minute services¹³. As a result, the

¹⁰ Common Line services would include SLCs and CCL. Local Switching services would include LS1, LS2, and information. Transport and Tandem Switching services would include TIC, tandem switching and transport, direct trunked transport, special access, and SS7. Database and Other services would include 800 database, LIDB, and BNA.

¹¹ Output growth for lines has been averaging between 2%-3%, while minute growth has been averaging between 7%-8%.

¹² Approximately, 92% of Aliant's common line revenues are recovered on a per-line basis. See Aliant 1996 Annual Tariff Review Plan.

¹³ Approximately, 97% of Aliant's local switching revenues are recovered on a per-minute basis. Id.

X-Factor has caused an inadvertent shift of common line costs to local switching. Therefore, LECs need flexibility to re-align and balance access charges with unbundled element prices. Moreover, beyond adopting the price cap structure proposed above, the Commission should consider allowing LECs to make exogenous cost shifts from the Local Switching and Transport and Tandem Switching baskets into the Common Line basket. This flexibility is necessary to ensure that competitors make entry decisions based on the correct economic price signals, not the distortions that exist in today's markets.

With reduced banding requirements, the price cap formulas can be redesigned to allow exogenous changes to be applied at the category/zone level. This would allow specific shifts of costs among categories/zones as approved by the Commission and could avoid problems like those created by the database exogenous cost adjustments. The Access Services Price Cap Basket could be managed by the following formula -

$$PCI_t = PCI_{t-1} * \left(1 + GDPPI - X + \frac{\Delta Z_{basket}}{R_{basket}} \right)$$

The R value would reflect all access services. The ΔZ component would be the sum of all exogenous changes applied to categories/zones. The only difference between this formula and the current PCI formulas is the removal of the access price components, which are only relevant to toll services. Without the access price components, the price cap PCI and upper limit formulas can be greatly simplified. The upper limit formula for categories/zones would be similar to the PCI formula except for the upward flexibility component of 10% -

$$Limit_t = Limit_{t-1} * \left(1 + GDPPI - X + \frac{\Delta Z_{cat/zone}}{R_{cat/zone}} \right) * 1.10$$

The R value would only reflect access services in the service category (eg. common line). The ΔZ component would reflect only exogenous changes applied to a category/zone (eg. removal of service specific costs from the TIC).

A separate basket should be maintained for Interstate IntraLATA toll calls until intraLATA dialing parity has been implemented. Once intraLATA dialing parity has been implemented the Commission should forbear from regulating these services.

As asserted by Aliant, USTA, and others in the CC Docket No. 94-1 Proceeding, the 5.3% X-Factor is excessive and overstates LEC productivity. Further, competition and the shifting of cost recovery from a per-minute to a per-line basis will reduce LEC productivity below that measured by the USTA TFP study. Therefore, when the Phase I trigger has been met, the X-Factor should be set equal to the inflation factor, in essence creating a rate freeze. Also, sharing should be eliminated as competition will provide a reasonable limit on earnings.

C. Phase 2

The trigger for Phase 2, actual competition, should not be based on a set formula. Instead, ILECs should have the ability to demonstrate competition on a market-by-market basis. The appropriate measure of competition in California or New York may not be the appropriate measure of competition for Nebraska. When actual competition is demonstrated, the relevant services should be removed from price caps. These services would continue to be subject to tariffing requirements

but could be filed on one day's notice. Competition for Phase 2 should be measured at a wire center level. Removal from price cap regulation at the wire center level can be accomplished by simply excluding demand for the affected services and wire centers from the price cap calculations. Since sharing will have been eliminated there will be no need for any cost adjustments.

D. Forbearance

As competition continues to increase, the Commission should use a demonstration of this increasing level of competition to forbear from regulating access services. This demonstration should be on a study area basis.

E. Reserve Deficiency

Any reserve deficiency amounts must be identified and recovered over a fixed period of time from all users of the public network, including IXC's and users of unbundled network elements. The reserve deficiency exists because regulators have kept depreciation rates artificially low with the promise of future recovery through monopoly charges. With passage of the 1996 Telecom Act, future recovery is no longer assured. However, the social contract cannot be abandoned. Both IXC's and users of unbundled network elements benefit from the ubiquitous network created through the social contract between ILECs and regulators. Any identified reserve deficiency should be placed outside of price cap regulation and amortized over a 3 to 5 year period as it is recovered from users of the public network. Aliant would be willing to make an exogenous cost change in a similar

manner to the payphone exogenous cost change¹⁴ to effect the removal of any ratebase amounts affected by a reserve deficiency from access charges.

IV. UNBUNDLED NETWORK ELEMENTS

The Commission should ensure that unbundled elements are only used to carry traffic to and from end users served by unbundled elements. In the long run, access prices will have to equalize with unbundled element prices, but in the short run, arbitrage opportunities will exist as ILECs strive to balance the various rate levels. Until access charges can be balanced with unbundled element prices, allowing unbundled elements to be used for end users that are still served by an ILEC will prevent the ILEC from recovering the incurred costs of providing service. The 1996 Telecom Act intended for unbundled elements to be the basis for local competition not the means to bypass exchange access services. Allowing a CLEC that captures a single customer in a wire center to route access minutes to and from customers not served by a CLEC will allow IXC's to bypass access charges for end users still served by the ILEC. This could potentially harm local competition by allowing IXC's to bypass access charges without capturing the end user, thereby reducing the incentive for the IXC/CLEC to compete for the end user. ILECs can only charge access for customers they can retain for local service. CLECs must compete on the same basis.

¹⁴

Aliant proposes to develop an exogenous change based on the percentage difference between a cost study run with existing depreciation rates and ratebase levels, and a cost study run with economic depreciation rates and the corrected ratebase levels.

V. CONCLUSION

In conclusion, the Commission should adopt a market-based approach to access regulation, allowing LECs the needed flexibility to balance access rates with unbundled elements. The Commission must also ensure that unbundled elements are only used for their intended purpose and not to bypass access charges.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert A. Mazer", is written over a horizontal line.

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins
1455 Pennsylvania Ave., N.W.
Washington, D.C. 20004-1008
(202) 639-6500

Counsel for Aliant Communications Co.

Dated: January 29, 1997